

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ZANTHE MATTHEWS, # B-24837,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 13-cv-01072-JPG
)	
RANDY DAVIS, Jr., J O'NEAL,)	
CHARLES W. PECK, NEALY FLAMM,)	
JOHN C. BENTON, SERINA F. LANE,)	
ROBERT A. BENEFIELD,)	
and M VALESTIN,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff filed a complaint pursuant to 28 U.S.C. § 1983 on October 15, 2013 (Doc. 1). On the same date, Plaintiff filed a motion for leave to proceed *in forma pauperis* (Doc. 2), which the Court denied on December 6, 2013 (Doc. 9). The Court ordered Plaintiff to pay the full filing fee of \$400.00 for this action within twenty-one days, i.e., by December 27, 2013 (Doc. 9, p. 4). Plaintiff was clearly warned that failure to pay the full amount by this deadline would result in dismissal of the case (*Id.*). The date to pay the fee has passed. Plaintiff failed to take any action by the deadline, in violation of the Court's order to do so. The Court will not allow this matter to linger indefinitely.

Accordingly, this action is **DISMISSED** without prejudice for failure to comply with a Court order. FED. R. CIV. P. 41(b). *See generally* *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal shall **NOT** count as a "strike" under 28 U.S.C. § 1915(g). Plaintiff's obligation to pay the filing fee for this action was

incurred at the time the action was filed, so the filing fee of \$400.00 remains due and payable. See 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

The agency having custody of Plaintiff is directed to remit the \$400.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$400.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account (including all deposits to the inmate account from any source) until the \$400.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from Plaintiff's trust fund account to the Clerk of this Court each time Plaintiff's account exceeds \$10.00, until the \$400.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at Big Muddy River Correctional Center upon entry of this Order.

The Clerk's Office is **DIRECTED** to close this case.

IT IS SO ORDERED.

DATED: January 2, 2014

s/ J. Phil Gilbert
United States District Judge